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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,377	10/31/2003	Jens Mogens Nielsen	674509-2052.1	3024
20/999 7590 02/10/2009 FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151				
EXAMINER				
PADEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
02/10/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/699,377

Applicant(s)

NIELSEN ET AL.

Examiner

Carolyn A. Paden

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44, 47 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44, 47 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 31, 2008 has been entered.

The recitation "wherein the first food material and the second food material are different food materials having different water contents is noted in the specification at page 20, lines 27-30.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-44, 47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woldhuis (0403030) in view of Van Der Graaf (5,405,626) or Van Der Graaf in view of Woldhuis.

Woldhuis discloses a coating for cheese made of wax and a wax-like fat of the composition of the claims (abstract, page 3, lines 5-23 and claims

1-2). The composition was applied to cheese and found to prevent or reduce the movement of water from the product (page 3, lines 24-32). Wax sources applied are shown in the Tables. Both short and long-chained fatty acids are esterified to the glycerol of the molecule in the chain-length specified by the claims. Although branched fatty acids are not mentioned, it would have been obvious to expect branched and straight chain fatty acids to be included in a fatty acid of a chain length of more than 4. Although the molar ratio of ingredients of claims 17-21 is not mentioned, the ratio would have been expected from the triglyceride description at page 3, lines 15-18. It is appreciated that the interesterification method by which the fat is made is not mentioned in the reference, but the claims are directed to the product and not to the method by which it is made. Further one of ordinary skill in the art would have expected a triglyceride containing a lot of short-chain fatty acids would have been made by interesterification because this type of triglyceride is not typically found in nature. The claims appear to differ from Woldhuis in the use of the coated cheese product in a multi-component foodstuff. Van Der Graaf teaches the inclusion of a moisture barrier coating on a bakery layer so that moist filling material may be applied to the bakery product. The moisture barrier coating in Van Der

Graaf is acetofan or acetoglyceride, which is component ii of claim 1. At column 2, lines 11-19 the use wax in coatings and multiple ingredient coatings is suggested. Although cheese is not mentioned as a filling material, the use of the barrier coating in pizza is mentioned at column 1, line 64. Further cheese fillings are known in the art of pastry dough preparations. It would have been obvious to one of ordinary skill in the art to use the coated cheese of Woldhuis in the pastry of Van Der Graaf to provide a filled puffed pastry with a waxy acetofat coating.

Conversely, Van Der Graaf discloses the inclusion of a moisture barrier coating on a bakery layer so that moist filling material may be applied to the bakery product. The moisture barrier coating in Van Der Graaf is acetofan or acetoglyceride, which is component ii of claim 1. At column 2, lines 11-19 the use wax in coatings and multiple ingredient coatings is suggested. The use of the barrier coating in pizza is mentioned at column 1, line 64. The claims appear to differ from Van Der Graaf in the use of the specific barrier composition of the claims that includes wax and compound ii. Woldhuis teaches a coating for cheese made of wax and a wax-like fat of the composition of the claims (abstract, page 3, lines 5-23 and claims 1-2). The composition was found to prevent or reduce the

movement of water from the product (page 3, lines 24-32). Wax sources applied are shown in the Tables. Both short and long-chained fatty acids are esterified to the glycerol of the molecule in the chain-length specified by the claims. Although branched fatty acids are not mentioned, it would have been obvious to expect branched and straight chain fatty acids to be included in a fatty acid of a chain length of more than 4. Although the molar ratio of ingredients of claims 17-21 is not mentioned, the ratio would have been expected from the triglyceride description at page 3, lines 15-18. It is appreciated that the interesterification method by which the fat is made is not mentioned in the reference, but the claims are directed to the product and not to the method by which it is made. Further one of ordinary skill in the art would have expected a triglyceride containing a lot of short-chain fatty acids would have been made by interesterification because this type of triglyceride is not typically found in nature. It would have been obvious to one of ordinary skill in the art to use the coated cheese of Woldhuis in the pastry of Van Der Graaf to provide a filled puffed pastry with a waxy acetofat coating.

Applicants' arguments relating to the Woldhuis in view of Rossman rejection are persuasive. Accordingly this rejection has been withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

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Art Unit: 1794

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